

National Compliance Strategy

2017–2020



Department of
Conservation
Te Papa Atawhai

Foreword

As public guardians, DOC staff monitor what is going on in our forests, waterways and back country. We are responsible for protecting and nurturing more than a third of New Zealand's landscape and thousands of precious and endangered species.

DOC is one of the top five government agencies that pursues prosecutions, with approximately 200 prosecutions before the courts each year. Being a credible law enforcement agency is a role that I take seriously and have made one of our key priorities.

This National Compliance Strategy demonstrates my strong public commitment to strengthening our compliance function over the next three years.

We have recently rolled out formal compliance plans for 45 DOC districts that cover the entire country. This national strategy brings those district plans together with a consistent approach focused on key priorities.

While we appear to be doing a decent job in this space, we can do better. We have legal enforcement powers determined by Parliament and must use them to protect New Zealand's conservation.

Poaching in marine reserves and breaching whitebait regulations remain the most common form of offending, but we also regularly see the wilful killing of protected species, illegal land encroachment, timber theft and the organised smuggling of wildlife and endangered species.

The most significant new focus for our compliance work in the years ahead will be to step up our monitoring and enforcement of the 4,000 permissions issued by DOC.

It's our responsibility to the taxpayer to ensure these operators are paying their way and meeting their concession requirements.

Doing so will also help us recover costs and free up resources that we can then put back into protecting our wildlife and special places.

I am looking forward to us making a real difference in compliance and ensuring people don't flout the rules.

The New Zealand public can help us by being DOC's eyes and ears. If anyone sees illegal or suspicious activity, I encourage them to call 0800DOCHOT and help us protect our unique species and places.

Lou Sanson

DOC Director-General

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Introduction

Conservation is what makes New Zealand special and many New Zealanders are actively engaged in it.

Healthy nature is necessary for healthy people and a healthy economy and is a key underpinning to New Zealanders' well-being.

Conservation is the 'engine room' of New Zealand's tourism industry and drives our global reputation. Our environmental credentials differentiate New Zealand's primary produce exports in a very competitive world.

Our vision for New Zealand – 'the greatest living space on Earth', reflects an overall desire for social and economic well-being, environmental health, wealth and personal well-being. This vision is larger than the Department of Conservation (DOC) and larger than just conservation. It recognises that conservation has more than intrinsic value, and it forms the foundation of DOC's strategy – that conservation benefits all New Zealanders and is, therefore, everyone's responsibility.

DOC's holistic functions

DOC has legislative responsibilities for New Zealand's conservation matters under a significant number of Acts of Parliament. To effectively administer this legislation, DOC carries out a diverse range of activities and programs.

This Strategy sets out DOC's approach to its compliance and law enforcement function, but this function occurs in coordination with the Department's extensive efforts to educate, work and engage with the public and our stakeholders.

Legislation framework

DOC's primary legislation, the Conservation Act 1987, and the following Acts, are the legislative mandate for most of our compliance activity:

- Marine Mammals Protection Act 1978
- Marine Reserves Act 1971
- National Parks Act 1980
- Reserves Act 1977
- Trade in Endangered Species Act 1989
- Wildlife Act 1953
- Wild Animal Control Act 1977
- Freedom Camping Act 2011

These primary Acts have several subordinate Regulations and Bylaws that generate a significant level of compliance activity and include:

- Marine Mammals Protection Regulations 1992
- Whitebait Fishing Regulations 1994
- Whitebait Fishing (West Coast) Regulations 1994
- National Parks Bylaws (various, at least 12)
- Reserves Bylaws (various)
- Taupo Fishery Regulations 2004
- Wildlife Regulations 1955
- Wildlife (Farming of Unprotected Wildlife) Regulations 1985

DOC also undertakes compliance work in relation to other legislation from time to time, for example under the Biosecurity Act, Resource Management Act, Dog Control Act and Animal Welfare Act.

The powers that these various Acts confer are varied and depend on the specific provisions contained within each piece of legislation.

Compliance guiding principles

When implementing its National Compliance Strategy, DOC has adopted the following guiding principles.

Transparency

DOC will provide clear information and explanation to our regulated stakeholders about the standards and requirements for compliance. As a minimum standard of transparency, DOC will ensure that all the various permits and permissions we issue are written in plain English and all specific conditions are written in a practical and understandable way.

The DOC website has links to factsheets, and [permit application processes](#) that serve to document best practice, and are often developed in conjunction with industry sectors. DOC will continue to update this information and develop new material, and we are open to requests from industry sectors to partner on such initiatives.

DOC will also inform the various industry sectors on overall compliance performance, as well as actions taken by us to proactively address issues and non-compliance, so that we can reduce non-compliance.

Consistency of process

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances across the country. To undertake the compliance function in a consistent manner, we will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems, processes and policies in place to support them.

Fair, reasonable and proportional approach

We will apply compliance interventions and actions appropriate for the situation. We will use our discretion justifiably and where it is lawful to do so, to ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to New Zealand's indigenous flora and fauna and the seriousness of the non-compliance.

Evidence-based and informed

We will use an evidence-based approach to our decision-making. Our decisions will be informed by sound investigative practice. A clear evidential basis is the primary consideration in deciding whether to take enforcement action, along with the public interest test.

Collaborative

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best conservation compliance outcomes for New Zealand. We will look for opportunities to develop best industry practice guidelines with our industry and other stakeholders.

Lawful, ethical and accountable

DOC will conduct itself lawfully and impartially and in accordance with these principles, relevant policies and guidance. We will document and take responsibility for our statutory decisions and actions. We will report on our performance against the national compliance Key Performance Indicators (KPIs).

Targeted

DOC will focus its compliance effort on the most important issues and problems to achieve the best conservation outcomes. We will target our statutory intervention at poor performers and illegal activities that pose the greatest risk to New Zealand's flora and fauna and conservation assets. We will apply the most appropriate enforcement approach, including using an educative approach, for the right problem at the right time.

Responsive and effective

We will consider all alleged non-compliance to determine the necessary interventions (or none, as the case maybe) to minimise impacts and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations, and carry out pro-active compliance where appropriate.

Customary rights

Section 4 of the Conservation Act states: "Act to give effect to Treaty of Waitangi. This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi."

The principles of the Treaty of Waitangi are not easy to define, and have never been defined in legislation. The principles of the Treaty revolve around the concept of partnership, the Crown's right to govern, consultation requirements, and Māori tino rangatiratanga over their natural resources and other taonga.

In compliance, any claim to Treaty or customary rights to do an unlawful act must be treated carefully, fairly and recorded accurately, should this be raised as a defence in law.

How non-compliance is identified

DOC identifies non-compliance via three main pathways.

Complaints from the public and other agencies

DOC has a 24/7 emergency hotline **0800 DOC HOT (0800 362 468)** and estimates that 14,000 calls are received annually, of which about 3000 are related to compliance. Typical compliance-related calls include illegal whitebaiting, vandalism of huts and tracks, removal of vegetation from conservation land and reserves, killing or catching of native wildlife, fishing in marine reserves and disturbing marine mammals.

The ability for DOC staff to instantly respond 24/7 to all complaints and allegations from the public will always be a challenge for the Department and, indeed, any statutory agency. This can also be a cause of frustration to the complainant directly observing the illegal activity.

DOC has adopted a best-practice approach that when immediate on-site attendance cannot practically occur, as much information as possible is obtained via the phone call (license plate, personal description and so on) to investigate and then report back to the complainant within specified time frames.

Where complaints are received and passed on by DOC's partner government agencies, we will endeavour to liaise directly with that agency to ensure a satisfactory outcome.

Programmed monitoring of activities by DOC staff

Across New Zealand, specific DOC staff are tasked with undertaking planned and proactive monitoring of the following main categories of activities:

- Whitebait compliance patrols
- Concessionaire inspections
- Marine reserve compliance
- Protection of wildlife, flora and fauna
- Other terrestrial type compliance activities, such as ponga theft, deliberate vandalism of structures, and so on.

A key aspect of this Strategy is to strengthen particularly the concessionaire compliance inspection programme, given the increase in tourism the country is experiencing.

With one of the largest operational field-based staffs of any New Zealand government department, all DOC staff should remain vigilant for non-compliance during their day-to-day operational duties.

Pro-active DOC compliance investigations

DOC's Principal Compliance Officers and Warranted Officers will undertake proactive investigations into suspected non-compliance. Such investigations are usually based on evidence of significant offending and are often national or even international investigations, at times in collaboration with INTERPOL.

Dealing with non-compliance

When non-compliance is identified, DOC will take enforcement action that is proportionate to the overall circumstances of the offending.

The various Acts that DOC operates under, and relevant case law, provide the formal enforcement tools that are available to the Department.

When non-compliance breaches a New Zealand law, DOC can:

- Issue a warning
- Issue an Infringement fine (*This currently applies to the Freedom Camping Act only, but submissions for wider application to DOC's other legislation is currently on the Parliamentary legislative agenda*)
- Take a prosecution to the courts.

When non-compliance with the Department's concession permits is established, DOC can:

- Suspend the concession to allow an investigation to be carried out
- Suspend the concession for a period as a penalty
- Cancel the concession in full or in part.

Where DOC encounters a deliberate or persistent failure to comply, or recidivist offending, DOC will take swift and firm enforcement action. Failing to do this will:

- Unfairly advantage those who are non-compliant, as against those who are complying
- Undermine incentives for voluntary compliance
- Damage DOC's credibility with the statutory sector and the wider public, who will perceive that the Department allows deliberate offenders to 'get away with it'
- Result in inconsistency with DOC's Internal Prosecution Policy.

To ensure national consistency, where an offence is identified all compliance files will be processed in accordance with DOC's Prosecution Policy.

Prosecution Policy

The Department's Prosecution Policy can be found at www.doc.govt.nz/about-us/our-policies-and-plans/prosecution-policy.

The Prosecution Policy details DOC's formally adopted position on:

- Accountabilities
- Conflicts of interest
- Prosecution decisions
- Tests for prosecutions
- Decision-making procedures
- Responsibility of prosecutors
- Appeals
- Infringement offences (where applicable)
- Diversion.

This policy will be formally reviewed at the expiry of this Strategy (2020) or earlier, if required.

DOC's national compliance priorities 2017–2020

Over the 2017–2020 period covered by this Strategy, DOC is signaling the following key priorities for its monitoring and compliance activity:

- Compliance with all of the various permits DOC issues, with an emphasis on tourism concessions
- Protection of wildlife, flora and fauna, both terrestrial and marine
- Compliance in the marine environment with various Acts
- Compliance with whitebait fishing regulations
- International smuggling of New Zealand's native flora and fauna, and including smuggling into New Zealand of Convention for International Trade in Endangered Species (CITES) listed species.

Compliance with DOC's permissions

As at October 2016, DOC had granted:

- 4250 concessions (3160 resource use and 1090 tourism)
- 460 Wildlife Act authorisations in the past 12 months
- 100 marine mammal permits
- 48 marine mammal research permits
- 22 marine reserve permits
- 160 research permits.

Given these numbers of permissions and their distribution across New Zealand, DOC will prioritise its compliance effort via industry best-practice risk assessments. In addition, some of the listed permissions are 'one-off' or low risk activities that may not require regular compliance monitoring.

Monitoring of concessions, and in particularly tourism concessions, will be prioritised over the 2017–2020 period. With the increases already observed in inbound tourism and future projections, DOC compliance staff will be ensuring that tourism concessionaires are compliant with their concession conditions. DOC will also be focusing on any tourism operators who are operating illegally without necessary concessions.

This focus on illegal operators without concessions is also being requested by some of New Zealand's main tourism operators, to ensure no 'unfair' commercial advantage is gained by unpermitted tourism operations accessing public conservation land.

Protection of wildlife, flora and fauna, both terrestrial and marine

A wide range of illegal activities continues across the conservation estate, including unlawful taking of fully protected species (for example kereru, theft of native trees including kauri, rimu, ponga and so on), increased harvesting of protected flora, the illegal modification of public conservation lands (for example land development within marginal strips and vegetation clearance), poaching, and commercial pressure on marine species and environs.

Monitoring of marine reserve and whitebait compliance continues as a prominent community driven and 'at place' focus for DOC's compliance activities. Where relevant, each DOC region/district office will develop a compliance programme to ensure ongoing compliance monitoring within New Zealand's marine reserves and, during the whitebait season, to ensure compliance with relevant legislation and regulations. Within the wider marine environment, compliance with regulations on interactions with marine mammals and dog attacks on marine mammals are of ongoing concern.

International smuggling and compliance with CITES

In the past, several arrests have been made of individuals and foreign nationals attempting to smuggle New Zealand's native flora and fauna overseas. DOC's intelligence networks suggest that this trend is continuing. The New Zealand Government's commitment to the CITES convention also obligates the Department to monitor our borders (in partnership with NZ Customs and Ministry for Primary Industries) to ensure endangered species from other countries are not illegally smuggled into New Zealand.

As a priority over the 2017–2020 period, DOC will continue to build and maintain intelligence networks with other agencies, monitor CITES border control activities and, in conjunction with international agencies such as INTERPOL, undertake proactive investigations when information and intelligence is received on such matters.

Compliance resourcing

DOC maintains a nationwide network of Warranted Officers who are formally trained and hold official Warrants to undertake compliance and enforcement activities under the legislation we are responsible for, across New Zealand and our offshore islands.

Given the diverse range of activities that occurs on conservation land around New Zealand, some DOC offices have specialist compliance programmes that are reasonably unique to their regions (for instance marine mammal monitoring in Kaikoura).

In addition, DOC has a highly specialised and experienced National Compliance Team, comprising Principal Compliance Officers, which takes the lead on nationally significant, legally complex or international investigations as and when required.

All DOC staff can contribute to compliance as the 'eyes and ears' of the organisation and will be encouraged to do so. New and existing staff will be informed of DOC's statutory compliance role by way of an appropriate induction package.

Honorary Warranted Officers

DOC acknowledges that successful partnering with communities across New Zealand is critical to achieve conservation outcomes.

DOC warranted officers cannot be ‘everywhere all of the time’. Hence assistance from motivated individuals and groups is essential to DOC’s compliance efforts. Members of the public can assist in two ways, by:

- Becoming an DOC Honorary Warranted Officer
- Exercising the powers of a member of the public.

Appointment of Honorary Warranted Officers

DOC can formally appoint Honorary Warranted Officers who can have the full or partial powers of a DOC Warranted Officer. A DOC internal policy determines an individual’s eligibility to be considered for an Honorary Warranted Officer, and consequential training, examination and health and safety requirements.

The four key requirements and prerequisites for appointing an Honorary Warranted Officer are:

- A previous or current relevant enforcement/compliance background in Police, MPI, local government or a similar position
- Located in parts of the country where the presence of active Honorary Warranted Officers is beneficial to DOC’s compliance efforts
- An ability to manage potential conflict situations at times in remote areas.
- Be subject to a Police Officer vetting process.

Please contact your local DOC office to further discuss any interest in becoming a DOC Honorary Warranted Officer.

All New Zealanders can play a role – powers of the public

Members of the public are encouraged to report any possible illegal activity on any conservation matter via the DOC Hotline 0800 DOC HOT (0800 362 468).

The DOC website contains information on what a member of the public can do when observing potential illegal activity at www.doc.govt.nz/report-illegal-activity.

Advice on ‘Compliance and law enforcement’ can be found at www.doc.govt.nz/compliance.

Cost recovery

DOC does not view cost recovery on its compliance activities as a revenue stream. However, commercial activities should cover the costs of their compliance inspections rather than this activity being funded from conservation budgets.

DOC has an internal Cost Recovery SOP (standard operating procedure) which outlines cost recovery options for staff.

Cost recovery generally only applies where DOC proactively monitors permits issued by the Department, and DOC’s intention to cost recover is included as a permit condition.

DOC will ensure that all permit holders understand and are aware of the likely annual monitoring costs, although monitoring may be planned in cooperation with the permit holder or alternatively may be unannounced ‘cold calls’.

For major investigations where DOC incurs considerable costs and where an offender has been found guilty, DOC will maintain a policy of seeking an award of costs from the Courts.

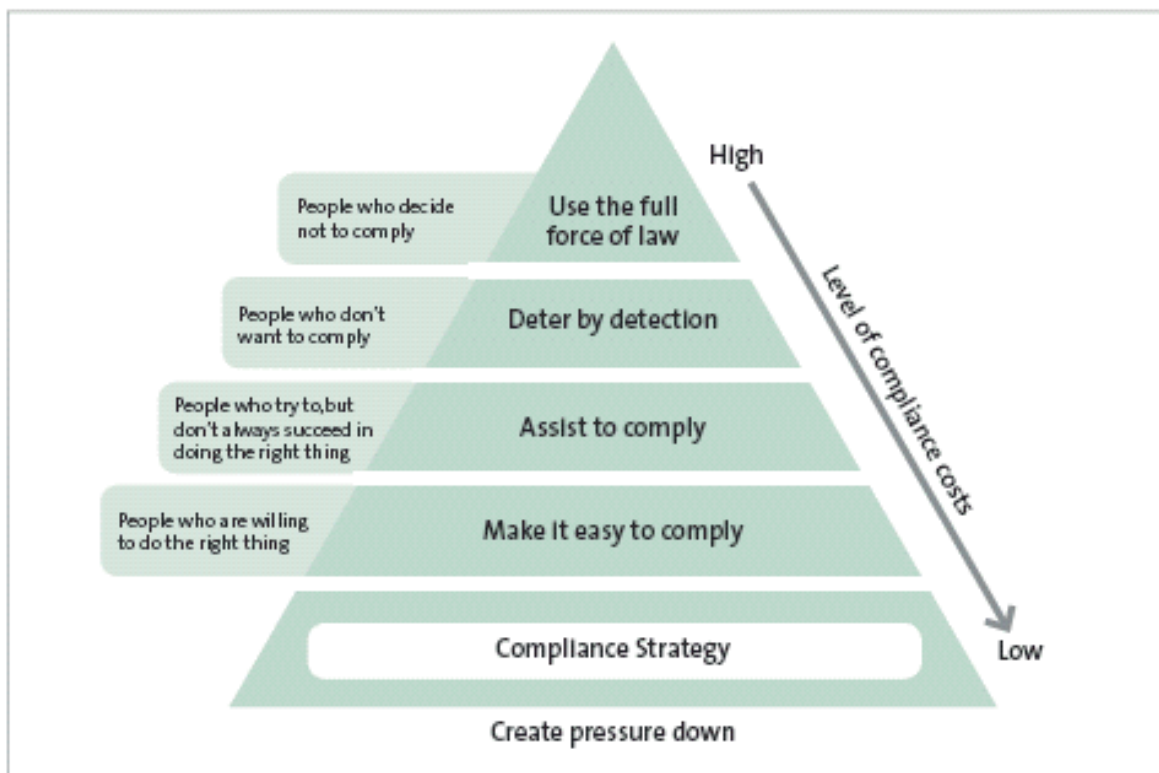
District compliance plans

Administratively, DOC is organised into nine regions and forty-five districts that cover New Zealand and its offshore islands.

In preparing each financial year's business plan, all DOC district offices will develop a district compliance plan that is an annual work programme of compliance monitoring and law enforcement activities. The district compliance plans can be combined into a regional and then national annual compliance work programme. This approach allows DOCs national compliance priorities to be a focus of the work programmes, while allowing sufficient flexibility for locally specific priorities. This is important, as it allows the priorities of the national strategy along with the diverse conservation issues across New Zealand to be accommodated within each district compliance plan.

Encouraging compliance

DOC has adopted the 'Braithwaite Compliance Triangle' (the 'pyramid of responsive regulation') that sets out the Department's strategic approach to compliance monitoring and law enforcement. The Braithwaite Model is internationally accepted, is recognised by most of New Zealand's other regulatory systems, and demonstrates a commitment to 'use the full force of the law' as a last resort.



The Braithwaite Compliance Triangle.

DOC is committed to each end of the triangle as all elements are interdependent on each other. Any one element of the triangle may be carried out by different parts of DOC at any one time and even on the same issue. The resource and emphasis DOC puts into any aspect of the

triangle will be determined on a case by case approach, and by the Department's Business Plan.

The Department acknowledges that a lack of investment in measures to make it easy to comply or in an educative/outreach approach will result in uncertainty of requirements to be compliant.

Conflicts of interest

DOC makes a considerable effort to partner with communities, stakeholders and our Treaty Partners, in achieving New Zealand's conservation outcomes. However, these partnerships must be carefully managed when DOC is exercising its legal compliance function.

As DOC has many valued relationships with multiple community and stakeholder groups, it is very important that clear separation exists between managing and being involved in such relationships and the compliance and law enforcement functions of the Department. For this reason, any staff member involved in a compliance matter should declare an actual or potential conflict of interest when they are also involved in a stakeholder relationship with the party being investigated.

In some cases, investigation or compliance decisions should be made by appropriately delegated staff in alternative offices/locations to achieve complete separation of functions.

Any DOC staff member or Honorary Compliance Officer who has any actual or potential conflicts of interest must not take part in any investigation, decision-making or consideration of enforcement action. If an actual or potential conflict of interest is identified once an investigation or decision-making process has commenced, the staff member must disclose the matter immediately to the DOC Solicitor, Compliance and Law Enforcement.

Partnering with other statutory organisations

Within New Zealand there are several other organisations that have a statutory compliance role. Existing and strong links exist between DOC and Ministry of Primary Industries, New Zealand Police and New Zealand Customs.

Other statutory agencies that DOC collaborates with from time to time include

- New Zealand Immigration Service
- Inland Revenue Department
- Environmental Protection Authority
- Civil Aviation Authority
- Maritime Safety Authority.

Internationally, DOC is closely associated with INTERPOL, other countries' CITES management authorities, US Fish and Wildlife Service and many other countries' environmental and conservation entities.

Increasingly, DOC is partnering with other New Zealand agencies to undertake multi-agency investigations where offending is occurring across different New Zealand laws and jurisdictions.

DOC remains an active member at a national and regional level within the Combined Law Agency Group (CLAG).

Training

Warranted Officer Training

To be given delegated authority by the Director-General of DOC, all prospective Warranted Officers and Honorary Warranted Officers must successfully complete a comprehensive block course and pass an exam. The block course comprises legal, theory, health and safety and practical field aspects, and along with the exam determine whether a warrant will be conferred.

Refresher training will also be required as the need arises, and particularly following new or amended legislation.

Formal unit standard courses for government regulatory and compliance staff have been developed recently. DOC will promote these unit standard courses to DOC staff who pass the DOC Warranted Officer training course.

Health, safety and well-being

The nature of the work undertaken by DOC is, at times, inherently hazardous and that is why we have a strong commitment to all areas of safety and well-being in our places of work and a robust health and safety management system.

For much of time, compliance work is a positive interaction with our stakeholders, community and tourists. However, there have been instances of significant confrontations associated with DOC's compliance work, and even physical assaults on DOC staff.

All Warranted Officers will receive specific and dedicated training, over and above DOC's normal training, in recognition of the potential risks that surround compliance work.